

Honorable Judge Benjamin H. Settle  
Honorable Judge David W. Christel

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JESUS CHAVEZ FLORES,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT, et al,

Defendants.

No. 3:18-cv-05139-BHS-DWC

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

1. Video and photographs depicting detainees.
2. Personally Identifiable Information, and Sensitive Personally Identifiable Information, to include birth dates, social security numbers, driver’s license or state ID #, passport numbers, alien registration numbers, alien files (A-Files), financial account numbers, biometric identifiers, email addresses, home addresses, phone numbers, or other information that could cause substantial harm, embarrassment, inconvenience, or unfairness to an individual if disclosed. In addition, Sensitive PII includes citizenship or immigration status, medical information, ethnic, religious, sexual orientation, or lifestyle information, and account passwords, when paired with another identifier of an individual (directly or indirectly inferred).
3. Documents, information, or material protected by the deliberative process privilege and/or the law enforcement privilege, or designated as “Law Enforcement Sensitive” including investigative reports.
4. Medical records.
5. Employment records.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and

1 (3) any testimony, conversations, or presentations by parties or their counsel that might  
2 reveal confidential material.

3 However, the protections conferred by this agreement do not cover information  
4 that is in the public domain or becomes part of the public domain through trial or  
5 otherwise. Either the GEO Defendants or the ICE Defendants will file a motion to seal  
6 the video and photographs depicting detainees that were previously filed and substitute  
7 into the record images that either redact or blur individual faces more specifically than as  
8 previously filed.  
9

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that is  
12 disclosed or produced by another party or by a non-party in connection with this case only  
13 for prosecuting, defending, or attempting to settle this litigation. Confidential material  
14 may be disclosed only to the categories of persons and under the conditions described in  
15 this agreement. Confidential material must be stored and maintained by a receiving party  
16 at a location and in a secure manner that ensures that access is limited to the persons  
17 authorized under this agreement.  
18

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the designating party, a receiving party  
21 may disclose any confidential material only to:  
22

23 (a) the receiving party's counsel of record in this action, as well as employees  
24 of counsel to whom it is reasonably necessary to disclose the information for this  
25 litigation;  
26

1 (b) the officers, directors, and employees (including in house counsel) of the  
2 receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
3 parties agree that a particular document or material produced is for Attorney's Eyes Only  
4 and is so designated;  
5

6 (c) experts and consultants to whom disclosure is reasonably necessary for this  
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
8 (Exhibit A);

9 (d) the court, court personnel, and court reporters and their staff;

10 (e) copy or imaging services retained by counsel to assist in the duplication of  
11 confidential material, provided that counsel for the party retaining the copy or imaging  
12 service instructs the service not to disclose any confidential material to third parties and to  
13 immediately return all originals and copies of any confidential material;

14 (f) during their depositions, witnesses in the action to whom disclosure is  
15 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
16 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the  
17 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
18 confidential material must be separately bound by the court reporter and may not be  
19 disclosed to anyone except as permitted under this agreement;  
20

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information.  
23

24 4.3 Filing Confidential Material. Before filing confidential material or  
25 discussing or referencing such material in court filings, the filing party shall confer with  
26 the designating party to determine whether the designating party will remove the

1 confidential designation, whether the document can be redacted, or whether a motion to  
 2 seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the  
 3 procedures that must be followed and the standards that will be applied when a party seeks  
 4 permission from the court to file material under seal.  
 5

6 In the interest of conservation of litigation resources and judicial efficiency, the  
 7 parties agree to the following terms for filing of the categories of confidential material  
 8 below:

9 (a) Video and photographs depicting individuals: any video or photographs  
 10 depicting individuals shall be blurred and/or partially redacted to protect the individual  
 11 identities prior to filing with the court, or filed with a stipulated motion to seal that  
 12 satisfies Local Civil Rule 5(g).  
 13

14 (b) Personally Identifiable Information, and Sensitive Personally Identifiable  
 15 Information: Any documents that contain personally identifiable information and/or  
 16 sensitive personally identifiable information, with the exception of medical records, shall  
 17 be filed openly with the court so long as the personally identifiable information and/or  
 18 sensitive personally identifiable information is redacted pursuant to paragraph 2, above. A  
 19 non-redacted copy may be filed with the court with a stipulated motion to seal that  
 20 satisfies Local Civil Rule 5(g).  
 21

## 22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
 24 party or non-party that designates information or items for protection under this agreement  
 25 must take care to limit any such designation to specific material that qualifies under the  
 26 appropriate standards. The designating party must designate for protection only those

1 parts of material, documents, items, or oral or written communications that qualify, so that  
2 other portions of the material, documents, items, or communications for which protection  
3 is not warranted are not swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
5 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,  
6 to unnecessarily encumber or delay the case development process or to impose  
7 unnecessary expenses and burdens on other parties) expose the designating party to  
8 sanctions.

9  
10 If it comes to a designating party's attention that information or items that it  
11 designated for protection do not qualify for protection, the designating party must  
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13  
14 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
15 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated  
16 or ordered, disclosure or discovery material that qualifies for protection under this  
17 agreement must be clearly so designated before or when the material is disclosed or  
18 produced.

19 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
21 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page  
22 that contains confidential material. If only a portion or portions of the material on a page  
23 qualifies for protection, the producing party also must clearly identify the protected  
24 portion(s) (*e.g.*, by making appropriate markings in the margins).  
25  
26

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a

1 party does not waive its right to challenge a confidentiality designation by electing not to  
 2 mount a challenge promptly after the original designation is disclosed.

3       6.2     Meet and Confer. The parties must make every attempt to resolve any  
 4 dispute regarding confidential designations without court involvement. Any motion  
 5 regarding confidential designations or for a protective order must include a certification,  
 6 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith  
 7 meet and confer conference with other affected parties in an effort to resolve the dispute  
 8 without court action. The certification must list the date, manner, and participants to the  
 9 conference. A good faith effort to confer requires a face-to-face meeting or a telephone  
 10 conference.  
 11

12       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
 13 intervention, the designating party may file and serve a motion to retain confidentiality  
 14 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).  
 15 The burden of persuasion in any such motion shall be on the designating party. Frivolous  
 16 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary  
 17 expenses and burdens on other parties) may expose the challenging party to sanctions. All  
 18 parties shall continue to maintain the material in question as confidential until the court  
 19 rules on the challenge.  
 20  
 21

22     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 23           OTHER LITIGATION

24       If a party is served with a subpoena or a court order issued in other litigation that  
 25 compels disclosure of any information or items designated in this action as  
 26 “CONFIDENTIAL,” that party must:



1 (a) promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or  
5 order is subject to this agreement. Such notification shall include a copy of this agreement;  
6 and  
7

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
9 the designating party whose confidential material may be affected.

10 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
12 confidential material to any person or in any circumstance not authorized under this  
13 agreement, the receiving party must immediately (a) notify in writing the designating  
14 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized  
15 copies of the protected material, (c) inform the person or persons to whom unauthorized  
16 disclosures were made of all the terms of this agreement, and (d) request that such person  
17 or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached  
18 hereto as **Exhibit A**.  
19

20 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
21 PROTECTED MATERIAL

22 When a producing party gives notice to receiving parties that certain inadvertently  
23 produced material is subject to a claim of privilege or other protection, the obligations of  
24 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
25 This provision is not intended to modify whatever procedure may be established in an e-  
26

1 discovery order or agreement that provides for production without prior privilege review.  
2 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set  
3 forth herein.

4  
5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each  
7 receiving party must return all confidential material to the producing party, including all  
8 copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
9 appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of  
11 all documents filed with the court, trial, deposition, and hearing transcripts,  
12 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
13 consultant and expert work product, even if such materials contain confidential material.

14  
15 The confidentiality obligations imposed by this agreement shall remain in effect  
16 until a designating party agrees otherwise in writing or a court orders otherwise.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 STIPULATED this 26th day of September, 2018.

19 McNAUL EBEL NAWROT & HELGREN PLLC

20  
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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Benjamin H. Settle  
United States District Court Judge

Jointly Presented by:

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
[print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Western District of  
Washington on [date] in the case of \_\_\_\_\_ *Chavez-Flores v. ICE et al.*,  
**ECF Case No. 3:18-cv-05139-BHS-DWC**. I agree to comply with and to be bound by all  
the terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in  
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Western District of Washington for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after termination  
of this action.

Date: \_\_\_\_\_

City and State where sworn and signed:

\_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_